SB CIVIL MISC. APPEAL NO. 1028/2002
(U.O.I. Vs. INDIAN OIL CORPORATION LTD.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 28.8.06.

Mr. Ghanshyam Brijwasi for the appellant.
Mr. K. Verma for the respondent.

The appellant is challenging the order dated 13.3.02 passed by the Railways Claims Tribunal, Jaipur whereby the learned Tribunal has granted a compensation of Rs. 6.82,165/- in favour of the claimant-respondent.

The brief facts of the case are that on 13.10.96 seven Tank Wagons containing 2,66,350 liters of Special Kerosene Oil were booked from Khari Rohar Road to Lalgarh in Bikaner vide Railway Receipt No. C-745661 dated 13.10.96. However, while the train was carrying the said consignment, near Sudsar Railway Station the train derailed. The contents of the seven Tank Wagons were transferred to another goods train. However, out of the seven Tank Wagons, two Tank Wagons were found totally empty. Moreover, the contents of the other tanks were discovered to be short by 2280, 1445, 5818 and 7375 liters. Thus a total loss was of 16980 liters of Special Kerosene Oil in addition to the loss suffered by the two other Tank Wagons

which were found to be empty. Therefore, the claimant filed a claim petition for Rs. 6,82,165/-. The notices were issued by the learned Tribunal. However, despite eight opportunities given to the Railways, the Railways failed to submit their written statement. Hence, vide order dated 24.5.2001 the appellant's defence was struck off. Ultimately vide order dated 13.3.2002, the learned Tribunal granted a compensation as aforementioned along with an interest of 9% per annum to the respondent. Hence this appeal before this Court.

Mr. Ghanshyam Brijwasi, the learned counsel for the appellant, has vehemently argued that since opportunity of hearing was not given to the Railways, the principle of natural justice were violated. Moreover, the train accident was an act of God. According to Section 93 of the Railways Act, 1989 (henceforth, to be referred to as 'the Act') , a railway administration is not responsible for the loss, destruction or damage or not delivering of any consignment arising out of act of God. According to the learned counsel the accident was an act of God, hence the railway could not be held responsible for the loss or the short delivery of the consignment.

On the other hand, Mr. K. Verma, the learned counsel for

the respondent, has stated that eight opportunities were given to the railways to submit their written statement. Despite a number of opportunities being given, the railways singularly failed to submit their written statement. Therefore, the learned Tribunal had no option but to strike off their defence and to proceed further. Moreover, an accident caused due to negligence of the railways cannot be brought within the category of “an act of God”. According to the learned counsel it was for the railways to prove that the said accident did not occurred because of negligence on the part of railways. Therefore, the benefit of Section 93 of the Act cannot be given to the appellant.

We have heard both the learned counsels and have perused the impugned order.

Although the principle of natural justice do warrant an opportunity of hearing to be given to the parties in a quasi judicial proceeding, but such a right does not exist ad infinitum. In case sufficient opportunities have been given to a party to submit its evidence or written statement, and the party fails to do so, then quasi judicial body, or the court is not expected to wait indefinitely. The quasi judicial body or the Court is within its power to proceed ex-parte

in such a case. It is empowered to strike off the defence and to proceed further with the case. In the present case since eight opportunities had been given to the railways, the railways cannot claim that sufficient opportunities were not given to them. Hence the principle of natural justice were not violated by striking off the defence. Therefore, the first contention raised by the learned counsel for the appellant is meritless.

The phrase 'act of God' refers to natural disasters such as earth-quake, floods, land slides, as these are not man made. But the phrase ' act of God' does not include an accident caused by the action or omission of human beings. The railway has not produced any evidence to show that the derailment was not caused by the negligence of the engine driver. Although after the said derailment there must have been an inquiry held by the railway administration, but the inquiry report has not been produced by the railways before the learned Tribunal. Therefore, a reasonable presumption can be drawn that the accident was caused by the negligence of the engine driver. Because of the negligence committed by the driver, the respondent had to suffer the loss of part of his consignment and the short delivery for the rest of the consignment. Therefore, the benefit

of Section 93 of the Act cannot be given to the appellant.

The railway administration was a bailee under Section 151, 152 and 167 of the Contract Act, 1972. Under Section 161 of the Contract Act, a bailee is to take care of the goods as a man of ordinary prudence in the same circumstance would take care of his own goods. Hence it was incumbent upon the appellant to show that despite the best of its efforts to take care of the consignment, the loss was caused due to unforeseen circumstances. However, the appellant has failed to do so. Therefore, the order dated 13.3.2002 is absolutely valid and legal.

In the result, there is no merit in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.